Supreme Court, U.S.
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No. 99-1292

In The

Supreme Court of the United States

October Term, 1999

UNITED STATES BAKERY, INC., dba SNYDER'S BAKERY, INC., a foreign corporation,

Petitioner,

v.

JOHN SCHNEIDER, KEVIN CRAWFORD, ROY R. CLARK, MIKE EDGAR, LEE HENDRICKSON, MARK C. JORDAN, RON LAMP, TERRY MOORE, KEITH NONENMACHER, CAL PAULUS, TOM STONE, JOE WURTZ and ROBERT J. FILLIUM, individually and on behalf of the Class,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Washington (Division III)

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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Filed March 13, 2000

8pp

TABLE OF CONTENTS

Page

1. THIS COURT DOES HAVE JURISDICTION UNDER THE FINAL JUDGMENT RULE. 1

2. THIS DISPUTE REQUIRES THE ATTENTION OF THIS COURT. 1

3. THE DECISION BELOW UNDERMINES THE RIGHTS OF A UNIONIZED EMPLOYER. 3

CONCLUSION 5

TABLE OF AUTHORITIES CITED

CASES

Page

Allis-Chalmers Corp. v. Lueck,
471 U.S. 202 (1985) 3

Belknap, Inc. v. Hale,
463 U.S. 491 (1983) 1

Jefferson v. City of Tarrant,
522 U.S. 75 (1997) 1

Livadas v. Bradshaw,
512 U.S. 107 (1994) 5

McDowell v. The Austin Co.,
39 Wash. App. 443, 693 P.2d 744 (1985) 4

Truck Insurance Exchange v. Rohde,
49 Wash. 2d 465, 303 P.2d 659 (1956) 4

1. THIS COURT DOES HAVE JURISDICTION UNDER THE FINAL JUDGMENT RULE.

Respondents challenge our assertion that this Court has jurisdiction under the final judgment rule. Yet they ignore this Court's decision in *Belknap* that a state court judgment like this one *is* final for purposes of certiorari. *Belknap, Inc. v. Hale*, 463 U.S. 491, 497 n 5 (1983). They rely instead on another decision that is much further afield. *Jefferson v. City of Tarrant*, 522 U.S. 75 (1997).

The question in *Belknap* was the same as in our case: whether federal labor law pre-empted a state court lawsuit by employees against their employer. This Court's explanation in *Belknap* why it had jurisdiction applies here equally: "To permit the proceedings to go forward in the state court" would involve "a serious risk of eroding the federal [pre-emption] policy." The pre-emption issue should therefore "be decided by this Court ... sooner rather than later in the course of the litigation." *Id.*, 463 U.S. at 497 n 5.

2. THIS DISPUTE REQUIRES THE ATTENTION OF THIS COURT.

Respondents' brief inadvertently makes our point. They acknowledge that their own collective bargaining agent decided they were "outside salesmen," and so agreed on their behalf. (Respondents' brief at 8.) They declare that arbitration would be futile because their own union disagrees with them. (*Id.*)

In other words, respondents admit they are using a state court lawsuit to attack a provision of their collective bargaining agreement. That would not present such a problem if the collective bargaining provision purported to

waive their nonnegotiable rights under a state statute. That isn't the case here. This state statute did not grant them an unequivocal right to overtime pay. Indeed, the state statute *denies* them such a right if the "purpose" of their employment is outside sales.[1] Now the "purpose" of a job is something that is at the heart and core of collective bargaining, whether that purpose be making sales, operating a lathe, or conducting a locomotive. Respondents' union therefore was acting within the scope of its authority when it bargained on their behalf that the "purpose" of their employment was indeed outside sales. Respondents disagree with their bargaining agent about that---and with the majority of their fellow workers. They turn to state court to invalidate that provision of their own collective bargaining agreement.

This case therefore offers a much-needed opportunity to sort out the respective roles of state law and collective bargaining when they overlap, when both have a valid role to play in resolving a dispute. There are three possible outcomes. The state court agreed with respondents that the collective bargaining agreement must yield to state law. Respondents accuse us of arguing for just the opposite, for the destruction of their state law rights in collective bargaining. We contend, however, that there is a third solution that is superior to these two either-or alternatives. As we suggested in our petition, there is a way for the state interest and the federal interest to be balanced and accommodated. Articulating that balanced solution is a task that only this Court can accomplish.

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[1] There are also other factors which govern whether they have such a right too, such as who has control over their hours. These factors are also subjects of collective bargaining.

We acknowledge that respondents should have a proper forum for their claims. That does not mean, however, that they can bypass the arbitration to which they agreed. Their complaint is essentially that they aren't performing outside sales in accordance with their job description. If that is so, then grievance arbitration can afford a way to change their jobs or their duties, without necessarily upsetting the jobs and duties of their hundreds of fellow driver-salesmen who they claim to represent. Afterwards, there may or may not be anything left of their state law claims. If there is, then any subsequent adjudication in state court may take account of previous decisions of the arbitrator within the scope of the arbitrator's function.

Respondents complain that the trial court dismissed their claim, rather than ordering arbitration. That, however, is precisely what this Court has done in similar circumstances. *See, e.g., Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220-21 (1985). It is, after all, up to them to invoke the arbitration procedure. If something remains of their state law claim afterwards, it can be dealt with then.

3. THE DECISION BELOW UNDERMINES THE RIGHTS OF A UNIONIZED EMPLOYER.

To get around the pre-emption doctrine, the Court of Appeals held that the trial court need not consider the collective bargaining agreements. We pointed out that that would deprive a unionized employer if its best evidence, and thereby impose an unfair penalty on the employer who

participates in collective bargaining.[2] Respondents now attempt to justify such an exclusion of evidence.

The Washington Court of Appeals did *not* hold that employment agreements were irrelevant evidence of the "purpose" of the employment. It simply crafted a way to keep these collectively bargained agreements out of evidence in order to avoid federal pre-emption. The general rule in Washington is to the contrary, *i.e.* that written contracts are the best evidence of the purpose of the parties. *Truck Insurance Exchange v. Rohde*, 49 Wash.2d 465, 469, 303 P.2d 659, 661 (1956) ("A basic rule in the construction of contracts is that the intention of the parties must control."); *McDowell v. The Austin Co.*, 39 Wash. App. 443, 693 P.2d 744, 749 (1985) ("The most reliable clue to the parties' intentions in a deliberately prepared and negotiated contract is the language of the contract.") It is pure invention to say that the Washington Court of Appeals invented a rule that applied to non-collectively bargained agreements as well.

Finally, respondents say that the collective bargaining agreements may be received into evidence, but only in support of our affirmative defense. (Respondents' brief at 6-7.) In other words: the federal pre-emption policy doesn't apply as long as the collective bargaining agreements are construed by the trial court at the behest of the defendant, rather than the plaintiff. We agree that Washington decisions so state. That, however, renders the pre-emption policy meaningless, and it is contrary to this

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2 Respondents say that we make this argument for "the first time in this proceeding." We could hardly have taken issue with the Court of Appeals' decision before it was issued. We have raised the arguments we make here at every step that we could.

Court's own precedents. *See, e.g., Livadas v. Bradshaw*, 512 U.S. 107, 124 n 18 (1994).

CONCLUSION

The Court should grant the writ.[3]

Respectfully submitted,

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[3] Petitioner has learned that on February 29, 2000, the Supreme Court of Washington denied a Petition for Review in another case that raises issues under the federal labor laws and the Washington Minimum Wage Act like those presented in the instant case. *Robert Huntley, et al. v. Frito-Lay, Inc.*, No. 68662-9 Petitioner is advised that the petitioner in that matter, Frito-Lay will be submitting promptly a Petition for Writ of Certiorari to this Court.